

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

RICHARD ROY MINOR

PLAINTIFF

VS.

CIVIL ACTION NO. 5:07-cv-134(DCB)(JMR)

R.J. REYNOLDS TOBACCO COMPANY,  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
AND PHILIP MORRIS USA, INC.

DEFENDANTS

ORDER OF DISMISSAL WITHOUT PREJUDICE

This cause is before the Court on the defendants R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Philip Morris USA, Inc. (collectively "the defendants")'s motion to dismiss (**docket entry 38**); Carroll Rhodes, Deborah McDonald, and Jeffrey A. Varas, attorneys for the plaintiff, Richard Roy Minor, deceased (collectively "the plaintiff's attorneys")'s motion for extension of time to file motion for substitution (**docket entry 39**); the plaintiff's attorneys' motion for leave to withdraw as counsel (**docket entry 42**), and the plaintiff's attorneys' renewed motion for leave to withdraw as counsel (**docket entry 47**). Having carefully considered the motions and responses, and being fully advised in the premises, the Court finds as follows:

This is a tort action filed in federal court by the plaintiff against three tobacco companies. On September 28, 2008, the plaintiff died, and on January 16, 2009, a Suggestion of Death was filed by the three defendants. On April 24, 2009, the defendants filed a motion to dismiss on the grounds that no motion for

substitution of parties has been made. On April 27, 2009, the plaintiff's attorneys filed a motion for extension of time to file a motion for substitution of parties. On May 5, 2009, and July 16, 2009, the plaintiff's attorneys filed motions to withdraw as counsel. On August 7, 2009, the Court ordered the plaintiff's attorneys to show what efforts they have made to contact the successors or personal representative of the plaintiff and what, if anything, was communicated to them concerning representation.

In response to the Court's Order, the plaintiff's attorneys state that they have conducted an investigation to determine whether or not an estate has been opened for Richard Roy Minor. The attorneys reviewed the docket of the Adams County Chancery Court and contacted heirs of the deceased. Response, p. 1. The attorneys determined that an estate has not been opened. Id., p. 2. The attorneys discussed representation with the heirs, and the heirs did not retain the attorneys to represent them or to open an estate. Id., p. 2 n.1. The attorneys state that they have not been retained to represent the estate, widow, or children of Richard Roy Minor. Id., p. 3.

In light of the plaintiff's attorneys' response, the Court finds that their motions to withdraw are well-taken and shall be granted. The Court further finds that the plaintiff's attorneys' motion for extension of time to file motion for substitution is not well taken and shall be denied.

As for the defendants' motion to dismiss, the Court finds that sufficient time has passed since the filing of the Suggestion of Death; therefore, this action shall be dismissed without prejudice pursuant to Fed.R.Civ.P. 25(a)(1). Accordingly,

IT IS HEREBY ORDERED that the motions to withdraw as counsel **(docket entries 42 and 47)** filed by Carroll Rhodes, Deborah McDonald, and Jeffrey A. Varas, attorneys for the plaintiff, Richard Roy Minor, deceased, are GRANTED;

FURTHER ORDERED that the plaintiff's attorneys' motion for extension of time to file motion for substitution **(docket entry 39)** is DENIED;

FURTHER ORDERED that the defendants R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Philip Morris USA, Inc.'s motion to dismiss **(docket entry 38)** is GRANTED, and this action is hereby dismissed without prejudice pursuant to Fed.R.Civ.P. 25(a)(1).

SO ORDERED, this the 8th day of December, 2009.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE